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ABSTRACT

A conference on Indochinese refugees, attended by representatives of Southeast Asian countries of first asylum and Western resettlement countries, has developed a Comprehensive Plan of Action (CPA) prescribing new measures to address continuing emigration from Vietnam and Laos. The CPA calls for the following measures: (1) controls on departures from Vietnam; (2) an expanded Orderly Departure Program for legal exit from Vietnam; (3) guarantees for safe arrival and humane treatment of asylum seekers by neighboring countries; (4) a regional refugee status determination process; (5) continued resettlement abroad for those accorded refugee status; and (6) the return of nonrefugees to their countries of origin. The first asylum countries protested the economic and security burdens imposed by immigration, and emphasized that all asylum seekers should be resettled outside the region or returned to their countries of origin. Vietnam asserted that warfare and economic isolation have destroyed the country's economy, affirmed the right for their citizens to emigrate, and opposed involuntary return. The Western resettlement countries emphasized the need to preserve first asylum in the region and to regularize timely legal departure, but protested involuntary return. Nongovernmental organizations (NGOs) from Europe, North America, and Australia called for protection of the rights of refugees while working to improve conditions in Vietnam. The following implementation issues require further attention: (1) safe arrival; (2) refugee status determination; (3) safe return; and (4) orderly departure. (FMW)

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ISSUE BRIEF

CENTER FOR POLICY ANALYSIS AND RESEARCH ON REFUGEE ISSUES

THE INTERNATIONAL CONFERENCE ON INDOCHINESE REFUGEES AND ITS AFTERMATH

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INTRODUCTION

The International Conference on Indochinese Refugees (ICIR) took place in Geneva, from 13-14 June. The ICIR was convened by the United Nations Secretary General in response to urgent calls by Southeast Asian countries of first asylum and Western resettlement countries for effective new measures to address the continuing exodus of persons from Vietnam and Laos. The last two years have seen an alarming trend of events which have threatened the state of refugee asylum and protection in the region, giving rise to a renewed sense of crisis. In the view of many, uncontrolled population movements from the countries of Indochina fourteen years after the fall of Saigon have taken on an increasingly migratory nature. Clearly, the emergency arrangements set in place by the Geneva Conference of 1979 had become inadequate for dealing with the present circumstances.

At the ICIR, representatives of seventy-four countries acclaimed a Comprehensive Plan of Action (CPA) prescribing the new measures to be undertaken by the international community. The culmination of a year of intergovernmental consultations, the Plan of Action had been formally proposed at an ICIR Preparatory Meeting held in Kuala Lumpur this past March.

In brief, the CPA calls for: controls on clandestine boat departures from Vietnam; an expanded Orderly Departure Program for legal exit from Vietnam; guarantees of safe arrival and humane treatment for Vietnamese and Laotian asylum seekers by neighboring countries; a region-wide refugee status determination process; continued resettlement abroad for all those accorded refugee status; and the eventual return of non-refugees to their countries of origin.

While this new Plan of Action is now officially in force, its actual implementation awaits the working out of operational arrangements by the countries which framed it. This complex task falls to an intergovernmental steering committee, chaired by the United Nations High Commissioner for Refugees (UNHCR), which has had meetings in Geneva and Bangkok since the June Conference. An overall review of the CPA and the effectiveness of its implementation will be conducted in October.

As was the case at the 1979 Geneva Meeting, the main focus of the ICIR was on Vietnamese boat and land people. Secondary consideration was given to the situation of Laotian asylum seekers in Thailand, characterized more generally as a matter of primary concern to Thailand, Laos and the UNHCR. The plight of displaced Cambodians at the Thai border was specifically not addressed by the ICIR. From the standpoint of the United Nations, that is an issue to be resolved within the context of a settlement of the Cambodian conflict.

The tone of the Geneva Conference was that of a sense of urgency, with all participants stressing the need for resolute action to deal with the rapidly deteriorating state of refugee asylum in the region. Sense of urgency notwithstanding, the country position speeches given at the Conference indicated a considerable divergence of views regarding the nature of the problem and the most desirable prescriptions for alleviating it. Clearly,

UD 027 552

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though, the common concern was for a strong endorsement of the Plan of Action as a means by which individual national interests could be served while still maintaining temporary asylum in the region. There was also a general recognition of the need for states to work in close cooperation, abstaining from any unilateral moves which might threaten a breakdown of the new arrangements.

The ICIR was significant in that the impetus for the meeting came initially from the region's countries of first asylum (essentially, the countries comprising the Association of Southeast Asian Nations, and Hong Kong), which have continued to exert substantial leadership in the consultative process. Also crucial has been the active participation of the two "source" countries: Vietnam and Laos. As a result, there has been an important shift of perspective on refugee problems -- from that of a predominantly Western, donor-country point of view to one shaped by the experiences and interests of the countries in the region. The implication of this is that success or failure to achieve durable long term solutions will depend, to a much greater degree, on the involvement of these players.

PERSPECTIVES OF THE MAJOR PLAYERS

Following is a general summary of the different perspectives evident among the participants of the Geneva Conference:

First Asylum Country Perspectives

The common thread throughout the speeches by the countries of first asylum was that the situation has become intolerable for them, to the point that effective international action is imperative in the face of a total breakdown of the 1979 arrangements. Major emphasis was placed on the "burden borne" by the asylum countries, and the threat to national and regional security that continued refugee movements pose. Regrettably, though, some of those calling for urgent action appealed for "a swift and final solution" to the problem and avoided any reference to the non-negotiable rights of asylum seekers to humane treatment, and of refugees to protection by countries in the region.

Commitments were made by the first asylum countries at the ICIR to continue to allow safe arrival and provide temporary refuge to asylum seekers from Vietnam and Laos. Spokesmen from these countries, however, made clear their expectation that all asylum seekers would eventually either be resettled outside the region, or returned to their countries of origin. In a similar vein, the first asylum countries pressed Vietnam to restrict clandestine departures, and called for measures to ensure that programs for legal exit be expanded to become "the sole means of departure" for those wishing to emigrate.

Additionally, calls were made for a definite timetable for implementation of the CPA, including measures for involuntary repatriation of those determined not to be refugees. The first asylum countries asserted that Vietnam bears primary responsibility for the "root conditions" which cause its citizens to flee, and they called on Hanoi to honour its obligations to receive back Vietnamese determined not to have international protection as refugees.

Vietnam's Perspective

Vietnam, for its part, brought attention to its own plight as an underdeveloped country whose economy is in desperate straits, due to generations of warfare and its present enforced isolation by the international community. These, Prime Minister Nguyen Co Thach argued, are the real "root causes", as he appealed for improved diplomatic and economic relations, and international assistance to help his country alleviate its problems. In view of these chronic difficulties, Vietnam affirmed the basic right of persons to leave the country and seek asylum abroad, and opposed for "humanitarian reasons" any involuntary return of its citizens. Mr. Thach indicated Hanoi's willingness, however, to engage in discussions after the Conference regarding the future of those determined not to be refugees.

The Western Countries' Perspectives

The Western countries of resettlement were unified in their concern to endorse the CPA, in order to preserve first asylum in the region and to regularize legal departure avenues for Vietnamese wishing to emigrate or reunite with

family members abroad. The bone of contention was the issue of involuntary return for those not accorded refugee status under the new regional screening process. While the CPA states that every effort will be made to encourage the voluntary repatriation of such persons, in "the first instance," it indicates that other "alternatives recognized as acceptable under international practices" would be considered if those efforts fail to resolve the issue "within a reasonable passage of time."

The majority of the resettlement countries, led by the United Kingdom and Australia, supported the call by the first asylum countries for an early return of non-refugees to Vietnam under internationally guaranteed conditions of safety and dignity. The United States, in an unlikely "alliance" with Vietnam and the Soviet Union (albeit for different reasons), stood alone among the Western countries in being "unalterably opposed" to any forced repatriation of Vietnamese asylum seekers, regardless of their status determination. U.S. Deputy Secretary of State Lawrence Eagleburger stated in his speech that this would remain the American position "unless and until dramatic improvements occur in [Vietnam's] economic, social and political life."

The resettlement countries responded positively to the CPA's call for the timely resettlement of all long-staying asylum seekers and refugees. This group includes those who had arrived in the region prior to an announced "cut-off date" (mid-March 1989 for the ASEAN countries, and June 1988 in the case of Hong Kong), as well as those arriving after that date who are able to establish claims to refugee status. Led by the United States, the resettlement countries made substantial admissions commitments to ensure that this goal is achieved.

NGO Perspectives

A statement was made by the International Council of Voluntary Agencies (ICVA), on behalf of concerned humanitarian non-governmental organizations (NGOs) from Europe, North America and Australia. Described by some as conveying "the unheard voice of the refugees" the NGO statement appealed for a strong commitment, by the ICIR's participating parties, to the right of humane treatment of all asylum seekers and of first asylum for refugees. The statement strongly opposed any moves toward the involuntary return of non-refugee asylum seekers, as long as the conditions which prompted their flight remain unchanged, and it pressed for an expanded Orderly Departure Program and sustained third country resettlement.

The NGO statement was very much a compromise position, representing some common ground amidst diverse points of view. A major dividing point, however, was the call by a number of NGOs (notably those whose activities include a strong international development and human rights emphasis, beyond refugee assistance programs) to address the "root causes" of the refugee exodus by working to resolve the Cambodian conflict and bring an end to Vietnam's economic and diplomatic isolation. While some wording to this effect was retained in the final statement, a more substantial treatment of these issues was opposed by other groups as being "outside the scope of the ICIR."

THE COMPREHENSIVE PLAN OF ACTION

The Plan of Action endorsed by the ICIR has the potential for addressing the region's chronic refugee crisis in a manner that significantly transcends the emergency prescriptions of the 1979 Geneva Conference. At the heart of the CPA is an essential agreement to preserve safe arrival and temporary first asylum in the region. Unlike the 1979 arrangements, the Plan calls for a region-wide process to determine the refugee status for individual asylum seekers. While affirming continued resettlement for bona fide refugees, the Plan, for the first time, places substantial emphasis on voluntary repatriation as the most desirable of durable solutions. Also for the first time, the mutually reinforcing commitments made at the ICIR should ensure that a more widely accessible Orderly Departure Program will become a viable alternative to clandestine flight for a greater number of would-be migrants and refugees.

Perhaps most important of all, the CPA provides for a "breathing space" -- the "buying of time," as some have put it -- pending further changes and developments in the larger political landscape

which will make longer term solutions a real possibility. There are grounds to question, however, whether the opportunities presented by this "breathing space" will be fully realized.
In large part, the CPA is a cooperative agreement which is supported by participating countries on the basis of perceived mutual self interest.
However, without a strong commitment to essential human rights principles as the non-negotiable basis of any comprehensive new approach, the measures being called for may well fail to ensure adequate protection of asylum seekers. In the absence of such a commitment, differing perceptions of obligation and response may serve to create only additional complications, rather than to achieve durable solutions.

ISSUES REQUIRING ATTENTION

Two months after the Geneva Conference, with the participating countries fully engaged in the difficult task of hammering out the operative measures called for by the Comprehensive Plan of Action, serious concerns remain over how these will actually be implemented:

Safe Arrival

Over and above the implementation of effective technical agreements and operational procedures, an unequivocal commitment must be made to ensure the safe arrival and humane treatment of all asylum seekers arriving in the region – regardless of their presumed or determined status. Although the CPA and numerous statements made in Geneva explicitly affirm this principle, there are disturbing reports that such basic protection rights are still being violated in the region.

Of grave concern is the fact that acts of piracy in the Gulf of Thailand still occur with alarming frequency and have taken on an extremely violent character. To their credit, the Royal Thai Government has taken strong measures to apprehend, prosecute and punish an increasing number of individuals who have committed crimes against boat people. However, survivor reports indicate the likelihood that pirates are sinking refugee boats they attack and are attempting to kill all passengers in order to avoid identification by witnesses. There are also problems regarding immediate access to new arrivals by UNHCR field staff in Thailand, making it difficult to ensure adequate international monitoring of protection in coastal areas.

Another cause for concern has been reports that, around the time of the Geneva Conference, Malaysian military authorities towed or "re-directed" a number of refugee boats away from their territorial waters. Malaysia has officially denied that any re-directions of boats have taken place. However, as reported by The Washington Post (18 August 1989), diplomats in the region indicate that at least 23 such incidents occurred in June and July of this year. According to the diplomats, as of mid-August, more than 1,200 Vietnamese boat people had arrived in Indonesia after having being re-directed by the Malaysian navy.

The Southeast Asian nations party to the Geneva Plan firmly assert that it is their intention to permit the safe arrival of all asylum seekers, and have stated that pushbacks or re-directions of boats are no longer their policy. There is no reason to doubt the sincerity of these pronouncements of policy by these regional leaders. However, questions need to be raised as to their capacity or political will to enforce such policy at the local level.

In order for the state of protection and safe asylum for refugees in the region to be adequately enhanced and preserved, the Southeast Asian governments need to go somewhat farther to demonstrate their resolve to achieve that goal. Whatever international assistance or resources are needed to help toward that end should be committed, without reservation, as long as that resolve is made clear.

Refugee Status Determination

Reports indicate that, other than Hong Kong, which has made refugee status determinations since 1988, screening programs for Vietnamese asylum seekers have not yet commenced in the rest of the region. Efforts are still underway to select and train personnel and work out operational modalities.

Concerted efforts need to be sustained by the parties of the CPA to ensure initiation of a prompt and fair refugee status determination process. While the implementation of this component of the CPA holds great potential for more firmly establishing the rights to protection and asylum for refugees in the region, it is also an area that is particularly vulnerable to failure or abuse. The experiences of both Thailand (since 1985, screening of Laotian refugees) and Hong Kong (since 1988, screening of Vietnamese) in recent years illustrate only too well many of the potential pitfalls, the net effect of which has been serious erosion of the very protection the process should be ensuring.

Safe Return

If efforts to establish a legitimate status determination process are successful, it should follow that a major priority would be to secure the timely and safe repatriation of those determined not to be refugees. Reportedly, serious bilateral discussions are already underway between the United Kingdom and Vietnam regarding the return of non-refugees from Hong Kong, and there are indications that Hanoi may become more flexible in this regard.

The U.S. in particular has been critical of such moves. It regards these as premature, and has urged that priority be given to overall implementation of the CPA, with efforts to encourage voluntary repatriation to be allowed a fair trial, in the "first instance." From this viewpoint, present considerations of involuntary return are not in order, at least not until after the October 1989 evaluation of the CPA.

The British and the Hong Kong authorities, on the other hand, assert that they have had a screening and voluntary return policy in effect for more than one year, which has not resulted in either large scale returns or the deterrence of continued large scale boat arrivals. From their point of view, a screening program cannot achieve its desired results without involuntary return of the screened out.

There are certain prerequisite assurances and arrangements to be made in order for the safe return of non-refugees to be supported. Similar to arrangements already in place for voluntary returnees, these would include guarantees by the Vietnamese not to prosecute those who fled the country clandestinely, full access by competent international monitors to the returnees, and appropriate international assistance to help facilitate re-integration. If these requirements are achieved, there would be little justification for opposing the return of those determined by a fair screening process not to have a well founded fear of persecution -- even an involuntary return. The alternatives proposed, which include indefinite detention in holding centers until such time as individuals "volunteer" to return, would seem to be less than humane. It is possible that such a scenario might actually threaten the state of protection for bona fide refugees in the region, by serving to encourage the arrival of still more boat people seeking an uncertain "open door."

The focal point of informal lobbying efforts by some American NGOs at Geneva was the establishment of a "regional holding center" as a humane alternative to the early return of the screened out non-refugees. Although the CPA mentions such a center as an option to be considered, the idea was not pursued in any of the country position speeches at the Conference. It appears unlikely that any of the countries of first asylum would be willing to accommodate such a center on its territory, given present uncertainties over the repatriation issue. Furthermore, it would be problematic to mandate a competent international authority to have ultimate responsibility for the protection of non-refugees and the eventual resolution of their status. The UNHCR points out that such a role would clearly be outside of its traditional mandate of facilitating protection, humanitarian assistance and durable solutions for refugees.

It might well be argued that the British have threatened the overall progress of the CPA by moving ahead to effect an early involuntary return of non-refugees from Hong Kong, before the October review. The United States, on the other hand, has hindered it by remaining "unalterably opposed" to even the possibility of involuntary repatriation, under appropriate safeguards, of those screened out by a legitimate status determination program. By refusing involvement, and promising instead vigorous opposition to any

such considerations, the U.S. has denied itself the opportunity to influence the outcome of efforts by the British and others to gain Hanoi's agreement to conditions conducive to a safe, internationally monitored repatriation program.

Orderly Departure

If the various measures being proposed to deter dangerous clandestine departure are to succeed, it is essential that larger numbers of people gain access to channels for legal emigration, such as the UNHCR sponsored Orderly Departure Program. Not only should this become the most viable option for those seeking reunion with family members abroad, but it should be widely accessible to vulnerable groups, like the releasees from re-education camps, who might otherwise feel compelled to leave by boat.

A bilateral agreement between the United States and Vietnam was reached in late July 1989, to facilitate the legal departure of former re-education camp inmates wishing to emigrate. The initial goal is for 3,000 ex-inmates and their accompanying family members to be interviewed by the end of this year, with the hope that departures in 1990 may reach as many as 1,000 persons per month. Estimates for the total number of ex-prisoners and accompanying relatives to be accommodated by this program range from 100,000 to 500,000. By either count, the numbers are significant, and they may well prove to be a considerable challenge for the capacity of either country to meet.

The matter of former prisoners is first and foremost a humanitarian issue, over and above its currency as a "war legacy" awaiting resolution by former antagonists. Of the various groups vulnerable to political repression in Vietnam, this one is unquestionably the largest and the most visible. These persons are also the most likely to become boat refugees if other options are limited. As such, their fate should be of the highest concern to all of the countries party to the CPA. Resolution of their situation must not be left to hang in the balance, subject to the vagaries of relations between the United States and Vietnam.

CONCLUSIONS

There are a great many pitfalls to be watched for during the coming months. It is quite possible that actual implementation of the Comprehensive Plan of Action will be less than consistent from one country to another. Additionally, it might be expected that decisions will often be made based on what is expedient or less politically costly -- rather than on humanitarian principle. Of greatest concern is a serious flaw in the underlying foundation of the Geneva agreement. As in 1979, the present commitment of countries in the region to providing first asylum to boat people remains conditional upon strictly temporary transit. The CPA is explicit in stating that all refugees will be resettled in third countries outside the region, and that non-refugee migrants are to be returned to their country of origin. This conditional "linkage" -- in the absence of a universal commitment to humanitarian treatment for asylum seekers as a basic human right -- leaves refugee protection in the region in a most fragile state of affairs.

The countries of first asylum in Southeast Asia have justifiable concerns for their national security and for the domestic problems precipitated by the continuing influx of Indochinese asylum seekers. The crisis is unquestionably a matter which can only be resolved by a determined commitment of resources and political will by the entire international community. In that endeavor, the Western nations, must play a leading role -- one which must include efforts to bring peace to Cambodia and economic reconstruction and stability to the region.

However, it is unacceptable that the protection of the lives and basic rights of asylum seekers remain subject to any quid pro quo arrangements with the first asylum countries. This is particularly so now that regional authorities will be actively engaged in a refugee status determination process under standards set by international law and practice. If that process is to have any integrity, it must be based upon a fundamental commitment to respect and uphold

the rights such a process is designed to protect. Without such an unconditional commitment by all of the parties, including the countries of Southeast Asia, the Geneva Plan of Action may well prove to be a recipe for disaster.

Despite the very real problems that are likely to be seen, the CPA does make a new and comprehensive framework **imaginable**, and, quite possibly, **workable**. Keeping in mind the very crucial element of an interim "breathing space" for refugee asylum and protection in the region, there may be a great deal that can be accomplished toward that end, while the breathing space remains viable. A moderately successful implementation of the CPA over the next few months, if carried out in a truly humane manner, may well achieve the goal of constructing a flexible but durable new framework. Within this framework, longer term solutions might become possible as changes in the larger political situation alter the conditions which have prompted large scale exodus for so many years.

Michael Knowles, RPG Research Analyst, accompanied Executive Director Dennis Gallagher to the International Conference on Indochinese Refugees in Geneva

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